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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL T. PAILLE,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 18A02-0603-CR-227

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Marianne Vorhees, Judge
Cause Nos. 18C01-0512-FC-49, 18C01-0512-FD-104

January 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Michael T. Paille appeals the award of credit time on his consecutive sentences. We affirm.

FACTS AND PROCEDURAL HISTORY

In March 2006, Paille entered into a plea agreement disposing of multiple charges under Cause Nos. 18C01-0308-FD-061 (“FD-061”), 18C01-0512-FC-049 (“FC-049”) and 18C01-0512-FD-104 (“FD-104”). The agreement provided the sentences from each cause would be served consecutively.

In FD-061, Paille pled guilty to operating a vehicle after being adjudged an habitual traffic offender, a Class D felony,¹ and operating a vehicle while intoxicated endangering a person, a Class D felony.² The trial court sentenced him to two years on each of these two counts, to run concurrently with one another. In FC-049, he pled guilty to operating a vehicle after a lifetime suspension, a Class C felony,³ and was sentenced to five years. In FC-104, he pled guilty to operating a vehicle after being adjudged an habitual traffic offender, a Class D felony, and resisting arrest, a Class D felony.⁴ He was sentenced to two years on each of these counts, to run concurrently. The remaining counts under this cause number were dismissed.

In accordance with the plea agreement and pursuant to Ind. Code § 35-50-1-2(d), the trial court ordered the sentences from these three cause numbers to be served

¹ Ind. Code § 9-30-10-16.

² Ind. Code § 9-30-5-2.

³ Ind. Code § 9-30-10-17.

⁴ Ind. Code § 35-44-3-3.

consecutively for a total sentence of nine years. The trial court awarded Paille 340 days of credit time under FD-061 but did not award credit time under FC-049 or FD-104.⁵

DISCUSSION AND DECISION

Credit time is governed by Ind. Code § 35-50-6-3. A person imprisoned awaiting trial or sentencing is initially assigned to Class I and, based on that classification, earns one day of credit time for each day he is confined awaiting trial or sentencing. Ind. Code § 35-50-6-3; Ind. Code § 35-50-6-4(a). “Confined awaiting trial or sentencing” means confined as a result of the charge for which the defendant is being sentenced. *Dolan v. State*, 420 N.E.2d 1364, 1373 (Ind. Ct. App. 1981). “Pre-sentence jail time credit is a matter of statutory right, not a matter of judicial discretion.” *Weaver v. State*, 725 N.E.2d 945, 948 (Ind. Ct. App. 2000).

When a defendant is incarcerated on multiple unrelated charges at the same time, a period of confinement may be the result of more than one offense. *Diedrich v. State*, 744 N.E.2d 1004, 1005 (Ind. Ct. App. 2001). If a person is incarcerated awaiting trial on more than one charge and is sentenced to concurrent terms for the separate crimes, Ind. Code § 35-50-6-3 entitles him to credit time applied against each separate term. *Stephens v. State*, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000), *trans. denied* 741 N.E.2d 1259 (Ind. 2000). “However, where he receives consecutive terms he is only allowed credit time

⁵ The trial court disposed of FD-061, FC-049 and FD-104 in a “consolidated order on sentencing hearing.” (App. at 98.) When actions have been consolidated in the trial court, they remain consolidated on appeal. Ind. Appellate Rule 38(A). Paille appealed FD-104 under appellate Cause No. 18A02-0603-CR-227, and FC-049 under appellate Cause No. 18A02-0603-CR-227. He did not appeal FD-061 separately. Because these actions remain consolidated on appeal, we issued an order directing the Clerk of this Court to transfer all filings made under Cause No. 18A02-0603-CR-226 to Cause No. 18A02-0603-CR-227, and close the docket for the cause number ending in CR-226.

against the total or aggregate of the terms.” *Id.* Where the legislature has decreed that a defendant must serve his sentences consecutively, it would be against legislative intent to also give the defendant full credit against each sentence for the time incarcerated on multiple charges; doing so would effectively allow the defendant to serve that portion of his sentences concurrently. *See Diedrich*, 744 N.E.2d at 1006.

Ind. Code § 35-50-1-2(d) provides terms of imprisonment “shall be served consecutively” if, after being arrested for one crime, the individual commits another crime while on probation or while released on his own recognizance or on bond. Paille was on probation and out on bond when he committed the offenses in all three of these cause numbers.⁶

Paille also agreed in his plea agreement that the sentences from the three causes would be served consecutively. A plea agreement is contractual in nature, binding the defendant, the State and the trial court. *Pannarale v. State*, 638 N.E.2d 1247, 1248 (Ind. 1994); *see also* Ind. Code § 35-35-3-3(e) (“If the trial court accepts a plea agreement, it shall be bound by its terms.”). Thus the trial court was bound to sentence Paille to consecutive sentences under the plea agreement as well.

Because his sentences must be served consecutively, Paille is entitled to credit time against only the aggregate of his sentence. *See Stephens*, 735 N.E.2d at 284. Having awarded 340 days credit time to the sentences for the charges filed under FD-061,

⁶ Paille was on probation related to a Florida conviction and was on bond for charges filed in Jay County.

the trial court correctly declined to award credit time to the portions of the sentence corresponding to the charges filed under FC-049 and FD-104.

Affirmed.

RILEY, J., and BAILEY, J., concur.